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REMARKS

The Examiner has required a supplemental oath or declaration under 37 CFR 1.67 due to the incorporation of the subject matter of Claim 31. Applicant has removed such subject matter. Thus, applicant respectfully asserts that the above requirement is deemed moot.

In the last Office Action dated 7/21/2005, the Examiner rejected Claims 1-7, 10-12, 14-20, 23-25 and 27-34 under 35 U.S.C. 103(a) as being unpatentable over Kingsford et al. (U.S. Patent No. 6,574,737) in view of Chang et al. (U.S. Patent No. 6,526,433), in further view of Porcaro et al. (U.S. Patent No. 5,699,511). Applicant respectfully disagrees with such rejection, especially in view of the amendments made hereinabove to each of the independent claims.

With respect to each of the independent claims, the Examiner has relied on the following excerpt from Kingsford to make a prior art showing of applicant's claimed "performing a risk-assessment scan-related timeout prior to making a determination that the target is failing to respond to the risk-assessment scan" (see the same or similar, but not necessarily identical language in each of the independent claims).

"This means that scan data records having a vulnerability field with the value "smtp service enabled" satisfy the objective. Typically, a plurality of data records will satisfy a given objective, so the module need not terminate once the first satisfying record is found. It may be run until a predetermined number, say three, of satisfying records are found, or until no more input data is forthcoming, or until a predetermined event occurs, such as a time out." (Col. 17, lines 29-37)

Applicant respectfully asserts that such excerpt clearly discloses running a scan module until "a predetermined number, say three, of satisfying records are found, or until no more input data is forthcoming, or until a predetermined event occurs, such as a time out." Simply nowhere does such excerpt even suggest "making a determination that the target is failing to respond to the risk-assessment scan," let alone "performing a risk-assessment scan-related timeout prior [to making such determination]," as specifically claimed by applicant.

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To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Applicant respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above. Nevertheless, despite such paramount deficiencies and in the spirit of expediting the prosecution of the present application, applicant has substantially incorporated the subject matter of Claims 32-33 into each of the independent claims.

With respect to the subject matter of Claim 32, presently incorporated into each of the independent claims, the Examiner has relied on Col. 2, lines 29-33 in Chang to make a prior art showing of applicant's claimed technique "wherein the timeout is set utilizing a plurality of network condition probes that gather multiple network condition measurements on a single target." Applicant respectfully asserts that such excerpt discloses that "the timeout value setting is adapted and adjusted according to environmental factors and communication conditions between each client/server pair." Clearly, such excerpt does not even suggest "utilizing a plurality of network condition probes," in the manner claimed by applicant. Further, in Chang, the timeout value setting is adapted and adjusted according to communication conditions between each client/server pair, and not "set utilizing a plurality of network condition probes that gather multiple network condition measurements on a single target," as applicant claims (emphasis added).

With respect to the subject matter of Claim 33, presently incorporated into each of the independent claims, the Examiner has relied on Col. 2, lines 29-33 and 43-47 in Chang to make a prior art showing of applicant's claimed technique "wherein the measured network conditions

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are measured for an entire network segment on which a plurality of target components is located." Applicant respectfully asserts that Chang discloses a "timeout value setting [that] is adapted and adjusted according to...communication conditions between each client/server pair" and that "the timeout value [is adjusted] for each client/server pair" (emphasis added). Thus, in Chang the timeout is adjusted based on each client/server pair, and not "based on network conditions...[where] the measured network conditions are measured for an entire network segment on which a plurality of target components is located," as applicant claims (emphasis added).

Since at least the third element of the *prima facie* case of obviousness has not been met, a notice of allowance or a proper prior art showing of all of the claim limitations, in the context of the remaining elements, is respectfully requested.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. NAI1P008/01.113.01).

Respectfully submitted,
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